

United States v. Terriquez-Flores, No. 05-50417

JUN 28 2006

REINHARDT, Circuit Judge, concurring in part and dissenting in part:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I concur with the majority's resolution of the defendant's claims with the exception of its conclusion that the district court did not err in denying Terriquez-Flores a minor role adjustment to his sentence. The district judge did not determine that Terriquez-Flores' role in a larger drug trafficking scheme was not minor, nor did he conclude that Terriquez-Flores was not a part of such a scheme. Instead, he made clear that he refused to consider granting a minor role adjustment in cases such as the one before us—notwithstanding the fact that such an adjustment is authorized under section 3B1.2 of the Sentencing Guidelines—because he simply disagreed with the Guidelines' authorization of the reduction. In doing so, he erred. *See United States v. Webster*, 996 F.2d 209, 211 (9th Cir. 1993).

Even after the Sentencing Guidelines were made non-mandatory by *United States v. Booker*, 543 U.S. 220 (2005), a district judge is not free disregard one of the Guidelines merely because he disagrees with it. *See United States v. Menyweather*, – F.3d –, 2006 WL 122894 (9th Cir. 2006); *United States v. Kimbrew*, 406 F.3d 1149, 1152 (9th Cir. 2005). Accordingly, I would hold that the district judge erred by refusing to consider granting the minor role adjustment to appellant and would remand for resentencing in that respect as well.